

Leg. Prog.

March 13, 1998

Memorandum 98-8

1998 Legislative Program

This memorandum reviews the status of recommendations in the Commission's 1998 legislative program.

AB 707 — Real Property Covenants

AB 707 (Ackerman) has been approved by the Assembly. It is set for hearing in the Senate Judiciary Committee on March 17.

In response to a suggestion from the Judiciary Committee consultant, the definition of a real property restriction has been adjusted to include "a limitation on, or provision affecting, the use of real property in a deed, declaration, or other instrument, etc." This is to avoid quibbles over whether a particular covenant, such as to maintain a boundary wall, is a "limitation" on use.

The Commission Comments to this bill also require revision to reflect the earlier removal of the obsolete restriction provisions from the bill. See Exhibit p. 1.

SB 177 — Best Evidence Rule

SB 177 (Kopp) has been approved by the Senate. It has been referred to the Assembly Judiciary Committee for hearing.

SB 453 — Administrative Law Judge Code of Ethics

SB 453 (Solis) is on the inactive file in the Senate. The measure includes both the administrative law judge code of ethics and a provision renaming workers compensation referees as administrative law judges. The original sponsor of the bill — the Association of California State Attorneys and Administrative Law Judges — has decided not to pursue the bill. We are working with Senator Solis' office to see whether the bill can proceed with just the Commission's material on ALJ ethics. However, Senator Solis may need the bill as a vehicle for a higher priority matter. In that case, we will need to look for another vehicle for this material.

SB 2063 — Business Judgment Rule

SB 2063 (Johnson and Kopp) is the business judgment rule codification proposal. Senator Kopp, who is an Independent, agreed to author the bill after our efforts to find an appropriate author revealed that nonpartisan authorship would be desirable. Senator Johnson introduced the bill as a courtesy to Senator Kopp, due to bill number limitations.

We have learned from the Consumer Attorneys of California that they will strongly oppose this proposal. We have also received comments on specifics of the proposal from interested persons who have now become aware of it. The Commission will need to review the new comments to determine whether any amendments are appropriate before the bill is heard.

SB 2139 — Trial court unification

SB 2139 (Lockyer) is a spot bill on trial court unification. A copy of the bill is attached as an Exhibit to Memorandum 98-12, scheduled for consideration by the Commission on March 20. It incorporates the transitional provisions for unification being developed by the Commission. It also includes a couple of stop-gap provisions that would provide a band-aid to make existing statutes work in a unified court until full statutory revisions developed by the Commission can be enacted.

SCR 65 — Annual Resolution of CLRC Authority

SCR 65 (Kopp) is the Commission's annual resolution of authority. The resolution requests no new topics. It is set for hearing in the Senate Judiciary Committee on March 17.

Inheritance Involving Stepparent or Foster Parent

The recommendation on inheritance involving a stepparent or foster parent is too small to warrant a separate bill. The Assembly Judiciary Committee is considering it for possible inclusion in a committee omnibus probate bill.

Response to Demand for Production of Documents in Discovery

If the Commission approves a final recommendation on the time for a response to a demand for production of documents in discovery, we will submit our report to the Assembly Judiciary Committee, which is currently proposing

legislation to the same effect. See Memorandum 98-13, scheduled for consideration by the Commission on March 19.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

REVISED COMMENTS TO AB 707 (ACKERMAN) — REAL PROPERTY COVENANTS

The following revisions of California Law Revision Commission Comments to provisions of AB 707 reflect the bill as amended March 4, 1998.

Civ. Code § 784 (added). “Restriction”

Comment. Section 784 provides a definition of “restriction” for application in ~~Chapter 8 (commencing with Section 888.010) (obsolete restrictions) of Title 5 and in Code of Civil Procedure Section 336 (statute of limitations).~~ The reference to “declaration” includes a declaration of restrictions in a common interest development intended to be enforceable as equitable servitudes. See Section 1353(a).

Code Civ. Proc. § 336 (amended). Five year statute of limitations

Comment. Subdivision (b) is added to Section 336 to make clear that the statutory limitation period applicable to enforcement of a restriction is five years, consistent with the general statutes governing recovery of real property. *Cf.* Section 319 (five years). This ensures a uniform limitation period regardless whether the restriction is in the form of a covenant, condition, negative easement, or equitable servitude. See Civ. Code § 784 (“restriction” defined); *cf.* 2 A Bowman, Ogden’s Revised California Real Property Law §§ 23.25, at 1155; 23.32, at 1159 (1975) (five years). ~~It should be noted that, while equitable servitudes in common interest developments are covered by this section, they are not subject to expiration under the obsolete restriction provisions of the Marketable Record Title Act. See Civ. Code § 888.020(a) (common interest development equitable servitudes excepted).~~

For purposes of subdivision (b), the time when a homeowners’ association is deemed to have knowledge of a violation of a restriction would be determined under general principles of imputed knowledge. See, e.g., Civ. Code § 2332. Thus an incorporated or unincorporated homeowner’s association is deemed to have knowledge of a violation of a restriction when an appropriate officer or agent of the association has knowledge of the violation.

Under subdivision (b), a failure to enforce a violation within the limitation period should not alone be grounds to imply a waiver or abandonment of the restriction. However, such a failure may, combined with other circumstances, be grounds for waiver or estoppel or evidence of abandonment or obsolescence. See, e.g., *Bryant v. Whitney*, 178 Cal. 640, 174 P. 32 (1918) (waiver). ~~It should be noted that a restriction may become unenforceable due to passage of time or for other reasons. *Cf.* Civ. Code §§ 888.030 (expiration of restriction), 888.070 (chapter does not revive unenforceable restriction), & Comments.~~

Subdivision (b) provides a two-year grace period to enable action on a violation that would become unenforceable upon enactment of this chapter and a shorter grace period for action on a violation that would become unenforceable within two years after enactment of this chapter. The two-year grace period does not operate to extend the time to act on a violation that would become

unenforceable by operation of law apart from this chapter, either pursuant to case law limitations or applicable statutes of limitation.